REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:1794/2020

(1)	**REPORTABLE: ~~YES~~ / NO**
(2)	**OF INTEREST TO THE JUDGES: ~~YES~~ / NO**
(3)	**REVISED.**

Signature ……………………

Date……………………

In the matter between:

RASAL ALAM MIAZI **PLAINTIFF**

And

ROAD ACCIDENT FUND. **DEFENDANT**

JUDGMENT

MONENE AJ

[1] The plaintiff an adult male person instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 12 March 2019. Already the merits in this matter have per court order dated 22 May 2023 been settled 100 percent in favour of the plaintiff. The same court order saw general damages settled in the amount of R700 000.00.

[2] Having initially filed the routine generally bare denial plea to this matter the defendant partook no further in the long evolution of the matter such that when this matter was set down for determination of loss of earnings, as it now is being heard, only the plaintiff had filed relevant expert reports.

[3] The plaintiff proceeded before this court per default, sought and was granted leave to prosecute his case in terms of Uniform Rule 38(2).

[4] Under cover of affidavit the plaintiff adduced the following uncontested evidence in brief:

> 4.1 Dr Reginald Moetji, an orthopedic surgeon's evidence was that the plaintiff suffered tenderness around T10 until T12 on the thoracic spine, scars on the chest, forehead and arm with sequelae of pain, migraine headache and severe back pains.
>
> 4.2 A neurosurgeon, Dr Akhona Mazwi's testimony was that the plaintiff on examination exhibited poor memory and concentration difficulties and further that he had an overall whole-body impairment of 22%. It was this witness' further evidence that going forward the plaintiff might need physiotherapy and psychotherapy as medical interventions. The doctor further stated that in his view, the plaintiff had fallen victim to a moderately severe head injury. The plaintiff was found to have chronic post concussive headaches, poor memory and incomplete quadriplegia. Curiously, this witness referred to a history of the plaintiff having suffered a rib injury in circumstances where the Orthopaedic surgeon, better qualified for such diagnosis, did not testify of such an injury.
>
> 4.3 A major take home from the evidence of Ms Zaheerah Fakir, an industrial psychologist opined that because most pre-accident capacities had been compromised the plaintiff's businesses would suffer major losses and concluded

that, "*While it is not envisaged that Mr Miazi will suffer a total loss of earnings, he has suffered a partial loss of earnings to date and will continue to suffer this, likely till he reaches retirement age. Mr Miazi should be compensated for the reported loss of earnings suffered following the accident, for the decreased income earned following his return to work, for all recommended treatment, and for the loss of earnings that he stands to face in the future because of the accident in question*."

4.4 The evidence of the industrial psychologist spoke a language similar to that of the Occupational Therapist whose evidence can best be summed in the following way:

> 4.4.1 The plaintiff's occupational dysfunctions demoted him from being a skilled worker in the medium to heavy demands category to medium with reasonable accommodations.
>
> 4.4.2 He will be highly disadvantaged in the open labour market.
>
> 4.4.3 He is unlikely to cope with more cognitively demanding jobs owing to cognitively deficiencies arising from the accident.

4.5 Itai Karidza of Tsebo Actuaries premised actuarial calculations in the main on the following quote from the industrial psychologist's expert report:

> "The *writer is of the opinion that his business would have been subject to market related competition and average business cycles. The writer opines that he would have worked towards expanding his business, however it is realistic to expect that his income may have fluctuated…Mr Miazi was only 32 years old when the accident occurred and would have been able to continue working and earning as he had, with annual inflationary increases. It is realistic to expect that as he already had a few*

stores opened, he would have likely been able to continue in this way and possibly opened more stores."

4.6 The actuarial expert computed a capital loss of earnings of R4 907 086.00 factoring in contingencies on a spread of 5%-10% on uninjured and 5% to 30% injured.

[5] The approach in assessing loss of earnings can be put no better than it was stated in **Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F** where the following was said:

> "*Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augururs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss..."*

[6] In my view the expert witnesses which are solid and informed are present day soothsayers and oracles providing a very useful service to the court in its determination of loss of earnings. To needlessly compute outside their evidence where it cannot be faulted and is unopposed would, in my view, be to act arbitrarily.

[7] The summary of expert evidence led before me above, which evidence I have no reason nor inclination to deviate from is, in my view, sufficient determinant of the quantum opined on loss of earnings. Given the well-documented sequalae of the injuries suffered by the plaintiff, particularly the cognitive and semi quadriplegia and in the light of the plaintiff's youthfulness at 34 at the time of the accident and further regard being had to the fact that he was a businessman with no less than three shops and could like all self-employed people have run his businesses up to at least 70 years of age, I cannot fault the computations arrived at by the actuary.

[8] Accordingly, I am persuaded to award the plaintiff general loss of earnings in accordance with the computation of the actuarial scientist and on the contingencies applied there.

[9] In all the above premises, I make the following order:

[9.1] The defendant shall pay an amount R 4 907 086.00(**FOUR MILLION NINE HUNDRED SEVEN THOUSAND AND EIGHTY-SIX RANDS ONLY**) as loss of earnings.

[9.2] The amount stated supra shall be paid by direct transfer into a trust account, as shall within 14 days of this order nominated by the plaintiff's attorneys of record, within 180 days of this order.

9.3 The defendant shall pay the plaintiff's taxed or agreed to party and party costs on a high court scale which costs shall include:

9.3.1 Costs of Counsel on scale B

9.3.2 The costs attendant to obtaining the expert reports employed in this matter.

9.4 Should the defendant fail to pay the amount timeously; the plaintiff shall be entitled to recover interest thereon on the prescribed rate of interest from the date of mora to date of final payment.

M S MONENE

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on *:*

Judgment delivered on *: 04 November 2024*

For the Plaintiff *: Adv M D MATSHETHE*

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For the Defendant *: No appearance*